

AMENDED IN ASSEMBLY JUNE 24, 2015

AMENDED IN SENATE MAY 19, 2015

SENATE BILL

No. 741

**Introduced by Senator Hill
(Coauthors: Senators Anderson and Leno)**

February 27, 2015

An act to add Article 11 (commencing with Section 53166) to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 741, as amended, Hill. Mobile communications: privacy.

Existing law makes it a crime to manufacture, assemble, sell, advertise for sale, possess, transport, import, or furnish to another a device that is primarily or exclusively designed or intended for eavesdropping upon the communication of another, or any device that is primarily or exclusively designed or intended for the unauthorized interception of reception of communications between a cellular radio telephone, as defined, and a landline telephone or other cellular radio telephone. Existing law additionally makes it a crime to purchase, sell, offer to purchase or sell, or conspire to purchase or sell, any telephone calling pattern record or list, without the written consent of the subscriber, or to procure, obtain, attempt to obtain, or conspire to obtain, any calling pattern record or list through fraud or deceit. Existing law contains certain exemptions from these crimes for law enforcement agencies.

This bill would require every local agency that operates cellular communications interception technology, as defined, to ~~(1) ensure that information and data gathered through use of that technology is protected with reasonable operational, administrative, technical, and physical~~

~~safeguards to ensure its confidentiality and integrity, (2) implement and maintain reasonable security procedures and practices in order operational, administrative, technical, and physical safeguards to protect information and data gathered through use of the technology from unauthorized access, destruction, use, modification, or disclosure, disclosure and (3) implement and maintain a usage and privacy policy, as specified, to ensure that the collection, use, maintenance, sharing, and dissemination of information and data gathered through use of the technology complies with applicable law and is consistent with respect for an individual's privacy and civil liberties. The bill would prohibit a local agency from acquiring or using cellular communications interception technology unless that acquisition or use is approved by a resolution or ordinance adopted by its legislature body at a regularly scheduled public meeting of the legislative body at which members of the public are afforded a reasonable opportunity to comment. The bill would require that the resolution or ordinance set forth the policies of the local agency as described above in (1), (2), and (3): agency. The bill would require that the local agency make the usage and privacy policy available in writing to the public and if the local agency maintains an Internet Web site, to conspicuously post the usage and privacy policies on that site. The bill would, in addition to any other sanctions, penalties, or remedies provided by law, authorize an individual who has been harmed by a violation of these provisions to bring a civil action in any court of competent jurisdiction against a person who knowingly caused that violation.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Article 11 (commencing with Section 53166) is
- 2 added to Chapter 1 of Part 1 of Division 2 of Title 5 of the
- 3 Government Code, to read:
- 4
- 5 Article 11. Cellular Communications Interception
- 6
- 7 53166. (a) For purposes of this article, the following terms
- 8 have the following meanings:
- 9 (1) "Cellular communications interception technology" means
- 10 any device that intercepts mobile telephony calling information

1 or content, including an international mobile subscriber identity
2 catcher or other virtual base transceiver station that masquerades
3 as a cellular station and logs mobile telephony calling information.

4 (2) “Local agency” means any city, county, city and county,
5 special district, authority, community redevelopment agency, or
6 other political subdivision of the state, and includes every county
7 sheriff and city police department.

8 (b) Every local agency that operates cellular communications
9 interception technology shall do ~~all~~ *both* of the following:

10 ~~(1) Ensure that information and data gathered through the use~~
11 ~~of cellular communications interception technology is protected~~
12 ~~with reasonable operational, administrative, technical, and physical~~
13 ~~safeguards to ensure its confidentiality and integrity.~~

14 ~~(2) Implement and maintain~~

15 ~~(1) Maintain~~ reasonable security procedures and ~~practices in~~
16 ~~order practices, including operational, administrative, technical,~~
17 ~~and physical safeguards, to protect information and data gathered~~
18 ~~through the use of cellular communications interception technology~~
19 ~~from unauthorized access, destruction, use, modification, or~~
20 ~~disclosure.~~

21 ~~(3)~~

22 ~~(2) Implement and maintain~~ a usage and privacy policy ~~in order~~
23 ~~to ensure that the collection, use, maintenance, sharing, and~~
24 ~~dissemination of information and data gathered through the use of~~
25 ~~cellular communications interception technology~~ *complies with*
26 *all applicable law and* is consistent with respect for an individual’s
27 privacy and civil liberties. This usage and privacy policy shall be
28 available ~~in writing, writing to the public,~~ and, if the local agency
29 has an Internet Web site, the usage and privacy policy shall be
30 posted conspicuously on that Internet Web site. The usage and
31 privacy policy shall, at a minimum, include all of the following:

32 (A) The authorized purposes for using cellular communications
33 interception technology and for collecting information ~~or data~~
34 using that technology.

35 (B) A description of the *job title or other designation of the*
36 employees who are authorized to use, or access information ~~or~~
37 ~~data~~ collected through the use of, cellular communications
38 interception technology. The policy shall identify the training
39 requirements necessary for those authorized employees.

1 (C) A description of how the *local agency will monitor its own*
2 *use of cellular communications interception technology will be*
3 ~~monitored~~ *to ensure the accuracy of the information collected and*
4 *compliance with all applicable privacy laws and a process for*
5 ~~periodic~~ *laws, including laws providing for process and time period*
6 *system audits.*

7 ~~(D) A description of reasonable measures that will be used to~~
8 ~~ensure the accuracy of information or data gathered through the~~
9 ~~use of cellular communications interception technology and a~~
10 ~~process to correct errors.~~

11 ~~(E) A description of how the local agency will comply with the~~
12 ~~security procedures and practices implemented and maintained~~
13 ~~pursuant to paragraph (2).~~

14 ~~(D) The existence of a memorandum of understanding or other~~
15 ~~agreement with another local agency or any other party for the~~
16 ~~shared use of cellular communications interception technology or~~
17 ~~the sharing of information collected through its use, including the~~
18 ~~identity of signatory parties.~~

19 ~~(E) The purpose of, process for, and restrictions on, the sharing~~
20 ~~of information gathered through the use of cellular communications~~
21 ~~interception technology with other local agencies and persons.~~

22 ~~(F) The length of time information or data gathered through the~~
23 ~~use of cellular communications interception technology will be~~
24 ~~stored or retained, and the process the local agency will utilize to~~
25 ~~determine if and when to destroy stored or retained information~~
26 ~~or data: information.~~

27 ~~(G) The official custodian, or owner, of information or data~~
28 ~~gathered through the use of cellular communications interception~~
29 ~~technology and which employees have the responsibility and~~
30 ~~accountability for implementing this subdivision.~~

31 ~~(H) The purpose of, and process for, sharing or disseminating~~
32 ~~information or data gathered through the use of cellular~~
33 ~~communications interception technology with other persons. The~~
34 ~~policy shall also identify how the use or further sharing or~~
35 ~~dissemination of that information or data will be restricted in order~~
36 ~~to ensure respect for an individual's privacy and civil liberties.~~

37 (c) No local agency may acquire or use cellular communications
38 interception technology unless approved by its legislative body by
39 ~~adoption~~ *adoption, at a regularly scheduled public meeting with*
40 *an opportunity for public comment, of a resolution or ordinance*

1 authorizing that acquisition or ~~use~~ *use and the usage and privacy*
2 *policy required by this section.*

3 ~~(d) The legislative body of a local agency shall not approve a~~
4 ~~resolution or ordinance authorizing the acquisition or use of cellular~~
5 ~~communications interception technology, unless the resolution or~~
6 ~~ordinance is adopted at a regularly scheduled public meeting of~~
7 ~~the legislative body at which members of the public are afforded~~
8 ~~a reasonable opportunity to comment upon the proposed resolution~~
9 ~~or ordinance. The resolution or ordinance shall set forth the policies~~
10 ~~of the local agency as required by paragraph (3) of subdivision~~
11 ~~(b).~~

12 ~~(e)~~

13 *(d)* In addition to any other sanctions, penalties, or remedies
14 provided by law, an individual who has been harmed by a violation
15 of this section may bring a civil action in any court of competent
16 jurisdiction against a person who knowingly caused that violation.
17 The court may award a combination of any one or more of the
18 following:

19 (1) Actual damages, but not less than liquidated damages in the
20 amount of two thousand five hundred dollars (\$2,500).

21 (2) Punitive damages upon proof of willful or reckless disregard
22 of the law.

23 (3) Reasonable attorney's fees and other litigation costs
24 reasonably incurred.

25 (4) Other preliminary and equitable relief as the court determines
26 to be appropriate.